

### REMARKS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1, 2, 7, 10-26, 28-34, and 38-57 remain pending in the present application. No new matter has been added.

By way of summary, the Official Action presents the following issues: Claims 1, 2, 7, 10-13, 33, 34 and 38-42 stand rejected under 35 U.S.C. § 102 as being anticipated by the Applicant's patent application; Claims 1, 2, 7, 10-13, 33, 34, and 38-42 stand rejected under 35 U.S.C. § 102 as being anticipated by Atsmon et al. (U.S. Patent No. 6,607,136, hereinafter "Atsmon"); Claims 14, 20, 21, 24-26, 28, 30-32, 43, 48, 49, 52-55 and 57 stand rejected under 35 U.S.C. § 103 as being unpatentable over Atsmon in further view of Logan et al. (U.S. Patent No. 6,088,455, hereinafter "Logan"); Claims 15-19, 22, 44-47 and 50 stand rejected under 35 U.S.C. § 103 as being unpatentable over Atsmon in view of Kraft et al. (U.S. Patent No. 6,225,546, hereinafter "Kraft"); Claims 23 and 51 stand rejected under 35 U.S.C. § 103 as being unpatentable over Atsmon in view of Eyer; and Claims 29 and 56 stand rejected under 35 U.S.C. § 103 as being unpatentable over Atsmon in view of Kim et al. (U.S. Patent No. 6,083,009, hereinafter "Kim").

### REJECTION UNDER 35 U.S.C. § 102

The Official Action has rejected Claims 1, 2, 7, 10-13, 33, 34 and 38-42 under 35 U.S.C. § 102 as being anticipated by the Applicant's patent application. The Official Action contends that the Applicant's specification describes all of the Applicant's claimed features. Applicant respectfully traverses the rejection.

Applicant notes that the rejection identifies paragraph 64 of the Applicant's specification as allegedly being "Applicant's Admitted Prior Art". However, as noted in

paragraph 64 “FIG. 1 illustrates schematically apparatus 1 according to a first embodiment of the invention ...”, paragraph 64, which follows provides further explanation on the claimed invention relative to FIG 1. Furthermore, Applicant respectfully directs the Examiner’s attention to the amendment filed September 9, 2004, which amended the specification to insert the heading “DETAILED DESCRIPTION OF THE INVENTION” at page 7, just before line 9, which is immediately prior to paragraph 62 in the publication.

It is wholly inappropriate to reject the Applicant’s claims based upon the very disclosure which is provided to support them. Accordingly, Applicant respectfully requests the rejection of Claims 1, 2, 7, 10-13, 33, 34 and 38-42 under 35 U.S.C. § 102 be withdrawn.

The Official Action has rejected Claims 1, 2, 7, 10-13, 33, 34 and 38-42 under 35 U.S.C. § 102 as being anticipated by Atsmon. The Official Action contends that Atsmon describes all of the Applicant’s claimed features. Applicant respectfully traverses the rejection.

Claim 1 recites, *inter alia*, an apparatus for establishing and outputting a succession of music titles in which an artistic or rational link is reflected in said succession, including:

first input means for receiving a sequence comprising an audio data stream of music titles in which an initial artistic or rational link is considered to exist between at least some pairs of adjacent items ... (emphasis added)

Atsmon describes an electronic card which can be used for recording an audio clip of raw content or content broadcast over TV, radio or heard by the card holder. Once the audio clip has been recorded, a variety of redemption schemes allow the user of the electronic card to benefit from the recording.<sup>1</sup> In one example, the user may record a sound clip from music heard over the radio. The user records the sound clip as a sample of music conforming to the

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<sup>1</sup> Atsmon, at column 55, lines 19-24.

user's taste. However, the user is unsure the music identity and wishes to have it identified.<sup>2</sup>

In this instance, a central music website is accessed for receiving the sound clip from the card. Pattern recognition software identifies the music (i.e., title) and provides the user various music forms (CDs, MP3, etc) corresponding to the title for purchase.<sup>3</sup>

Conversely, in an exemplary embodiment of the Applicant's claimed advancements, an apparatus is provided to establish and output a succession of the music titles in which artistic or rational link is reflected in the succession. The apparatus includes a first input which receives a sequence including an audio data stream of music titles in which an initial artistic or rational link is considered to exist between at least some pairs of adjacent items. A segmentation is provided to attract the segmentation data indicating en limits of the music titles from the website associated to a source of the audio data stream. The segmentation is received through a second input separate from the audio data stream, and recovery of the music titles is performed in response to the segmentation data. The music titles are then stored in the apparatus.

As can be appreciated, and as clearly noted in Atsmon at column 59, lines 24 through 49, a sound clip is provided to a web server for the purpose of identifying the sound clip. In other words, not only does Atsmon not disclose the Applicant's claimed reception of a sequence including an audio data stream of music titles, **it cannot as the sole reason for providing the sound clip to the web server is to identify the sound clip.** As such, the Official Action has not identified any portion of the cited reference which provides music titles provides music titles in accordance with the Applicant's claims.

As apparent from the above identified distinction, the required analysis of the base Claim 1 recited "first input means" and associated functions has not been performed. In this

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<sup>2</sup> Atsmon, at column 59, lines 24-26.

<sup>3</sup> Atsmon, at column 59, lines 27-30.

regard, the PTO reviewing court recently emphasized that conclusory findings that omit analysis as to “means” claim limitations are improper in Gechter v. Davidson 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) as follows:

In addition, the [PTO] never construed the scope of the structures disclosed in the specification for the claimed "receiving means," nor did the [PTO] expressly find that the "receiving means" disclosed in the specification was structurally equivalent to that embodied in [the reference]. Moreover, the [PTO] also failed to define the exact function of the receiving means, as well as to find that [the reference] disclosed the identical function. [Emphasis added, citation omitted.]

Thus, it appears that the outstanding Action is relying on conjecture or unfounded assumptions in suggesting that Atsmon describes a first input means in accordance with the identical function recited in the Applicants’ claims, which, recite “receiving a sequence comprising **an audio data stream of music titles** in which an initial artistic or rational link is considered to exist between at least some pairs of adjacent items” However, this is clearly a modification of the actual teachings found at col. 59 lines 24-49<sup>4</sup> and such a modification to actual reference teachings using unfounded assumptions and/or speculation is improper. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967) (“The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.”).

There is no PTO analysis as to how this completely dissimilar input “means,” can be said to be structurally equivalent to the Claim 1 recording control means. Likewise, there is no PTO analysis as to the required explanation of how the Atsmon functions disclosed at the

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<sup>4</sup> Applicant notes that this portion of Atsmon is referred to as “section 341” and reproduced as an Appendix to the Official Action of July 28, 2006.

relied upon col. 59 lines 24-49 section are identical to the functions claimed as to the recording control means, as the above noted *Gechter* decision requires.

Accordingly, Applicant respectfully submits that Claim 1 and any corresponding dependent claims are allowable over the cited reference. Likewise, method Claim 33 recites substantially similar features to that discussed above, albeit, in a non-means function format. As such, this claim and any corresponding dependent claims are likewise allowable over the cited reference. Accordingly, Applicant respectfully requests that the rejection of Claims 1, 2, 7, 10-13, 33, 34, and 38-42 under 35 U.S.C. § 102 be withdrawn.

REJECTION UNDER 35 U.S.C. § 103

The Official Action has rejected Claims 14, 20, 21, 2-26, 28, 30-32, 43, 48, 49, 52-55 and 57 under 35 U.S.C. § 103 as being unpatentable over Atsmon in view of Logan. The Official Action contends that Atsmon describes all of the Applicant's claimed features with exception of similarity analyzing means for producing automatically similarity relations between stored segments ... . However, the Official Action cites as Logan as describing this more detailed aspect of the Applicant's claimed advancements and states that it would have been obvious to one of ordinary skill in the art at the time the advancement was made to combine the cited references for arriving the Applicant's claims. Applicant respectfully traverses the rejection.

As noted above, Atsmon does not describe all of the features of the Applicant's claims for which has been inserted. Likewise, Logan does not remedy the deficiency discussed above, Applicant respectfully submits that prima facie case of the obviousness does not presented.

Accordingly, Applicant respectfully request that the rejection of Claims 14, 20, 21, 2-26, 28, 30-32, 43, 48, 49, 52-55 and 57 under 35 U.S.C. § 103 be withdrawn.

The Official Action has rejected Claims 15-19, 22, 44-47 and 50 under 35 U.S.C. § 103 as being unpatentable over Atsmon in view of Kraft. The Official Action contends that Atsmon describes the all of the Applicant's claimed features with exception of similarity analyzing means producing similarity relations by producing each segment corresponding to an information item .... However, the Official Action cites Kraft as describing this more detailed aspect of the Applicant's claimed advancements and states that it would have been obvious to one of ordinary skill in the art at the time the advancement was made to combine the cited references for arriving the Applicant's claims. Applicant respectfully traverses the rejection.

As noted above, Atsmon does not describe all of the features of the Applicant's claims for which has been asserted. Likewise, Kraft does not remedy the deficiency discussed above. Applicant respectfully request that prima facie case of the obviousness has not been presented.

Accordingly, Applicant respectfully requests that the rejection of Claims 15-19, 22, 44-47 and 50 under 35 U.S.C. § 103 be withdrawn.

The Official Action has rejected Claims 23 and 55 under 35 U.S.C. § 103 as being unpatentable over Atsmon in view of Eyer. The Official Action contends that Atsmon describes all of the features of the Applicant's claimed advancement, with exception of program generating means being response to user input expressing a like or dislike ... . However, the Official Action has cited Eyer as describing this more detailed aspect of the Applicant's claimed advancement, and states it would have been obvious to one of ordinary skill in the art, at the time the advancement was made, to combine the cited references for arriving at the Applicant's claims. Applicant respectfully traverses the rejection.

As noted above, Atsmon does not describe all of the features of the Applicant's claims for which has been asserted. Likewise, Eyer does not remedy the deficiency discussed above, Applicant respectfully submits that prima facie case of the obviousness has not been presented.

Accordingly, Applicant respectfully request that the rejection of Claims 23 and 55 under 35 U.S.C. § 103 be withdrawn.

The Official Action has rejected Claims 29 and 56 under 35 U.S.C. § 103 as being unpatentable over Atsmon in view of Kim. The Official Action contends that Atsmon describes all of the Applicant's claim features with the exception of program generating means comprises means for labeling and storing said created sequences as objects ... . However, the Official Action cites Kim as describing this more detailed aspect of the Applicant's claim advancement, and states it would have been obvious to one of ordinary skill in the art at the time the advancement was made, to combine the cited references for arriving at the Applicant's claim. Applicant respectfully traverses the rejection.

As noted above, Atsmon does not describe all of the features of the Applicant's claims for which has been asserted. Likewise, Kim does not remedy the deficiency discussed above, Applicant respectfully submits prime facie case of obviousness has not been presented.

Accordingly, Applicant respectfully requests that the rejection of Claims 29 and 56 under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

**Should the Examiner continue to disagree with the above distinctions, Applicant respectfully requests that the Examiner provide an explanation via Advisory Action pursuant to MPEP § 714.13 specifically rebutting the points raised herein for purposes of facilitating the appeal process.**

**Please note in accordance with the discussion herein, should the rejections in the Official Action of July 28, 2006 be maintained, Applicant intends to request a Pre-Brief Appeal Conference in accordance with the pilot program outlined in the Official Gazette Notice of July 12, 2005.**

Consequently, in view of the foregoing remarks, it is respectfully submitted that the present application, including Claims 1, 2, 7, 10-26, 28-34 and 38-57, is patentably distinguished over the prior art, in condition for allowance, and such action is respectfully requested at an early date.

Respectfully submitted,

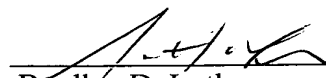
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